IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2717 OF 1989

1. Ramchandra Maruti Mirokhe,
2. Bhausaheb Maruti Mirokhe, since
   deceased, by heirs :
   A) Smt.Anusaya Bhausaheb Mirokhe,
   B) Anandrao Bhausaheb Mirokhe,
   C) Sanjay Bhausaheb Mirokhe,
   D) Sou. Malan Kisan Pisal,
   E) Sou. Sunanda Suresh Khebade,
3. Patangrao Maruti Mirokhe ... Petitioners

versus

Sambhu Gopala Chavan, since
   deceased, by heirs :
   1) Dattu Sambhu Chavan,
   2) Kisan Sambhu Chavan, since
      deceased, by heirs :
      A) Smt.Tarubai Kisan @
         Krishna Chavan,
      B) Ramchandra Kisan @
         Krishna Chavan,
      C) Suresh Kisan @
         Krishna Chavan,

D) Sharad Kisan @
Krishna Chavan,

3) Sanjay Ganpati Chavan,

4) Sou.Janabai Tukaram Shinde,

5) Sou.Tarubai @ Dwarkabai
Patangrao Mirokhe. ... Respondents

...

Mr. V.B. Naik, for the Petitioners.

Mr. P.D. Dalvi, for Respondents Nos.1, 3, 4 & 2A to 2D.

Mr. M.R. Katikar, for Respondent No.5.

...

CORAM : A.M.KHANWILKAR,J.

January 14th, 2005.

JUDGMENT :

01. This writ petition takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal, Pune, dated July 26, 1988 in Revision No. MRT-NS-VIII-14/87 (TEN.B.225/87:Pune). Briefly stated, the lands in question form part of different survey numbers situated at Village Talabid, taluka Karad, district Satara. One Shamu Vithu Chavan was the

original owner of the suit lands. It is admitted position that he had physical disability being a leper. The Petitioners before this Court claim through the owner Shamu Vithu Chavan having inherited the suit lands on account of the Will Deed left behind by the owner dated 23rd April 1964. The original respondent - Shambhu Gopal Chavan - claims that he was cultivating the suit lands as tenant since 1935. It appears that during the lifetime of the owner Shamu Vithu Chavan, proceedings under section 32G of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "the said Act") were commenced. The tenancy authority, however, observed that the original respondent should seek the declaration under section 70(b) of the said Act - that he was the tenant on the Tillers' Day in respect of the suit property. It appears that the tenancy authority also observed that proceedings under section 32G of the said Act would stand postponed also because of the physical disability of the original landlord. The original respondent questioned the correctness of the decision of the tenancy authority before the appellate authority, which,

in turn, accepted the challenge of the respondent by remanding the matter to the tenancy authority for fixation of purchase price in respect of the suit lands. This means that the Petitioner - original respondent - was found to be deemed purchaser by the appellate authority. The original owner (predecessor of the Petitioners) challenged that decision before the Maharashtra Revenue Tribunal, which allowed the revision application by restoring the order of the tenancy authority requiring the original respondent to seek declaration under section 70(b) of the said Act. As mentioned earlier, the predecessor of the Petitioners, the original owner, had executed a Will on 23rd April 1964 bequeathing the suit lands to the Petitioners. The original owner is stated to have died on 12th July 1964. On the basis of the said Will Deed, the Petitioners asserted their right in respect of the suit lands and attempted to dispossess the original respondent from the suit lands. As a consequence, proceedings under section 145 of the Code of Criminal Procedure were commenced and certain orders were passed in those proceedings protecting the possession of the original

respondent. The original respondent also filed suit before the Civil Judge, Junior Division, Karad, being Civil Suit No. 13 of 1966 for the reliefs prayed therein. In addition, the original respondent filed application under section 70(b) of the said Act, which was numbered as Tenancy Case No. 27 of 1965 before the Mamlatdar, Karad. In the Civil Suit filed by the original respondent, as issue of tenancy was involved, the Civil Court framed necessary issues in that behalf and made reference under section 85A of the said Act, which reference was numbered as Court Reference No. 4 of 1983. As the question involved in the application under section 70(b) of the Act filed by the original respondent and in the reference proceedings was common, the Additional Tahsildar, Karad, thought it appropriate to decide both the proceedings together. On considering the materials on record placed by the original respondent in the shape of 7 x 12 extracts indicating that the original respondent was cultivating the suit lands since 1949-50 till the institution of the suit, except the short period between 1955-56 to 1958-59, as well as the land revenue receipts produced by the

original respondent and the decisions in proceedings under section 145 of the Cr.P.C., as well as the interim order passed by the Civil Court, the Tahsildar recorded a finding that although the claim of the original respondent that he was cultivating the suit lands since 1935 cannot be accepted, but it appears that he was tenant in the suit lands since 1959-60, as per the Mutation Entry No. 4856 dated 1st July 1959 and was tenant in the suit lands since then till the institution of the civil suit on 7th January 1966. This decision of the Tahsildar dated June 30, 1985, was challenged both by the original respondents as well as the Petitioners before the Sub-Divisional Officer. The Sub-Divisional Officer in the appeals preferred by both sides reappreciated the evidence on record and has found as of fact that the original respondent was cultivating the suit lands as tenant since 1949-50 which position was fortified from the 7 x 12 extracts from that period. Insofar as the period between 1955-56 to 1958-59 is concerned, the mutation entry has been discarded by the appellate Court on the reasoning that there was nothing on record to show that the relevant

mutation entry was effected after giving notice to the original respondent. On the other hand, it appears that the said mutation entry came to be effected and admission of the minor son of the original respondent came to be recorded subsequently. The appellate Court has found that the minor son of the original respondent had no business to attend the Court and admit non-possession of the suit lands as mentioned in the disputed mutation entry. On analysing all the materials on record, the appellate authority, therefore, found that the original respondent was tenant since 1949-50 till the institution of the suit and more particularly, on the Tillers' Day. Accordingly, the appellate authority answered the issue in favour of the original respondent on the above terms. Aggrieved by the said decision of the appellate authority dated January 30, 1987, the Petitioners carried the matter in revision before the Maharashtra Revenue Tribunal at Pune. The Tribunal essentially found that it was not open to reappreciate the evidence on record to take a different view than the one taken by the appellate authority. It found that there was no error committed by the appellate authority in the

view as taken. The revisional authority accordingly rejected the revision application preferred by the Petitioners by the impugned judgment and order. Against this decision, the present writ petition under Article 227 of the Constitution has been filed by the present Petitioners.

02. Mr. Naik, appearing for the Petitioners, contends that there is no legal evidence on record to sustain the finding reached by the Courts below that the original respondent was cultivating the suit lands as tenant. He then contends that admittedly, the original owner was physically disabled being a leper. In other words, he was not in a position to cultivate the land personally. Nevertheless, by virtue of section 2(6) of the said Act, it will have to be assumed that he was cultivating the suit lands personally. It is argued that since the original owner was cultivating the lands personally in law, it necessarily follows that the original respondent, though physically tilling or husbanding the suit lands, cannot become a tenant, much less a deemed tenant, so as to be

declared as deemed purchaser by virtue of section 32 of the Act. To support this submission, emphasis was placed on Explanation I to section 2(6) of the Act, which provides that a widow or a minor or a person who is subject to physical or mental disability or serving member of the Armed Forces shall be deemed to cultivate the land personally if such land is cultivated by servants or by hired labour or through tenants. He further contends that in the fact situation of the present case, the original respondent would not be entitled to purchase the suit lands as he is related to the Petitioner No. 3 and if it is so, he cannot be treated as tenant, being member of the owner's family as falling under the excepted category provided for in section 4 of the said Act. It is lastly contended that the thumb impression on the applications preferred on behalf of the original owner are fraudulent and fabricated, as it is inconceivable that a leper would be able to put his thumb impression in the form as it appears on the application. On the above arguments, it is prayed that the orders passed by the authorities below be set aside and it be held that the original respondent is not

tenant in respect of the suit lands.

03. On the other hand, Counsel appearing for the Respondents contends that the present petition is devoid of merits. He submits that it is not open for this Court to reappreciate the evidence on record to take a view different than the one reached by the final fact finding Court. It is argued that no fault can be found with the revisional authority for having observed that it is not open for the revisional authority in view of the limited jurisdiction under section 76 of the Act to overturn the finding of fact reached by the appellate authority, which finding cannot be said to be manifestly wrong or perverse. It is next contended that it is not open to the Petitioners to contend that the original respondent cannot be tenant in respect of the suit lands, as during the lifetime of the original owner, the predecessor of the Petitioners, proceedings under section 32G of the Act were initiated between the parties which went right upto the Tribunal by way of revision and that decision has attained finality. In other words, that question cannot be allowed to be

raised at the instance of the Petitioners. It is then contended that at any rate, there is no substance in the argument that the original owner will have to be assumed to be cultivating the suit lands personally in view of Explanation I to section 2(6) of the Act. On the other hand, that legal presumption is not available having regard to the Explanation II to Section 4(1) of the Act, which provides that where any land is cultivated by a widow or a minor or a person, who is subject to physical or mental disability, or a member of the Armed Forces through a tenant, then "notwithstanding anything contained in Explanation I to clause (6) of section 2", such tenant shall be deemed to be tenant within the meaning of this section. It is argued that original respondent does not fall in the excepted category provided in section 4 of the said Act and since he was lawfully cultivating the suit lands belonging to the original owner, he was deemed tenant by virtue of section 4 of the said Act; and in such a case, it was not necessary to produce any lease or rent receipt. It is argued that entries in the 7 x 12 extract raises presumption which indeed is rebuttable. However,

in the present case, the presumption has remained unrebutted. It is contended that the argument canvassed on behalf of the Petitioners that the original respondent cannot be treated as tenant being relation of the Petitioner No. 3 will have only to be stated to be rejected. This is so because this contention is being raised before this Court for the first time and being question of fact cannot be entertained. It is then contended that even the argument that the thumb impression occurring on the applications preferred on behalf of the original owner are fraudulent, even this argument is being canvassed before this Court for the first time and ought not to be permitted. According to the Respondents, no fault can be found with the finding of fact reached by the appellate authority, which has been rightly confirmed by the revisional authority. Besides, reliance is placed on the decision of this Court in the case of Kishan Ramchandra Kumbhar & Ors. v. Dr. Kashinath Bandu Teli & Ors., reported in 2003 (3) ALL MR 817, in particular on the exposition in paras 10 to 12 thereof. The Respondents, therefore, submit that the petition be dismissed

being devoid of any merits.

04. Having considered the rival submissions, I have no hesitation in taking the view that this petition is devoid of any substance. It is seen that the appellate Court has analysed all the materials on record and after having done so, recorded a positive finding of fact that the original respondent was cultivating suit lands since 1949-50 till the institution of the suit, including on the Tillers' Day. The finding of fact so reached, to my mind, is unexceptionable. The entries in the 7 x 12 extracts since 1949-50 consistently mention that the original respondent was cultivating the suit lands as tenant in Mode IV. The only exception is for the period between 1955-56 to 1958-59 on account of the mutation entries which have been recorded without notice to the original respondent. Such mutation entries cannot denude original respondent of being a deemed tenant within the meaning of section 4 of the Act, especially when it has been found that he did not fall in any of the excepted categories provided in section 4 of the Act. The argument canvassed before this Court that the

original respondent was relation of the Petitioner No. 3, in the first place, cannot be entertained, being raised for the first time before this Court. In any case, the fact that the original respondent was relative of the Petitioner No. 3 will make no difference inasmuch as it is nobody's case that the original respondent was the member of the original owner's family, i.e., deceased Shamu Vithu Chavan. Moreover, it is not the case of the Petitioners that the original respondent was a servant on wages payable in cash or kind. The only argument canvassed is that there is no legal evidence produced by the original respondent that he was cultivating the suit lands on crop share or as hired labourer under the personal supervision of the owner. In fact, the evidence does indicate, as has been found by the appellate authority, that the original owner was residing at Majagaon. No positive evidence has been adduced on behalf of the Petitioners to show that the original respondent came within the excepted category provided in section 4 of the Act. On the other hand, the case of the original respondent was that he was cultivating the suit lands on crop

share basis. Indeed, the original respondent has not produced any receipt to indicate that position. However, the appellate authority has considered the materials on record, especially the consistent entries in the 7 x 12 extracts since the year 1949-50 till the institution of the suit as well as the land revenue receipts produced by the original respondent. Indeed, the revenue receipts did not clearly mention that the land revenue was paid in respect of the suit lands only, but the appellate authority on analysing the entire materials on record has reached at a finding of fact. It is not possible to take the view that the said finding is manifestly wrong or perverse as such. It needs to be observed that in the present case, in fact all the authorities below have concurrently found that there existed relationship of landlord and tenant between the parties. Inasmuch as, the first authority accepted that claim of the Respondent since 1959-60 onwards, but that finding is reversed by the appellate authority in favour of the Respondents on the assessment of the evidence and, which is a possible view, that the tenancy is from 1949-50 onwards. If it is

so, it is not open for this Court to reverse the said finding, merely because another view on the basis of same materials is possible. On the other hand, the said finding will bind this Court. The appellate authority has also considered the manner in which the name of the original respondent came to be deleted for the period between 1955-56 to 1958-59 and for which reason has discarded the said mutation entries. That approach, to my mind, is the correct approach when considered in the light of the enactment, being a social welfare legislation. In other words, it is not possible to depart from the finding of fact reached by the appellate authority and as confirmed by the revisional authority, that the original respondent was cultivating the suit lands as tenant since 1949-50 till the institution of the suit.

05. To get over this position, it was contended that the suit lands were cultivated personally by the original owner Shamu Vithu Chavan, relying on Explanation I to section 2(6) of the Act. This argument, as rightly contended on behalf of the Respondents, clearly overlooks

the mandate of Explanation II to section 4(1) of the Act. Explanation II is a non-obstante clause and expressly overrides the effect of Explanation I to section 2(6) of the Act. Viewed in this perspective, coupled with the fact that the original respondent does not fall in the excepted categories provided in section 4(1) of the Act, it will have to be held that the original respondent is the deemed tenant in respect of the suit lands as he was lawfully cultivating the same since 1949-50 till the institution of the suit in the year 1966. Reliance has been rightly placed on the exposition in paragraph 10 to 12 of the decision in the case of Kishan Ramchandra Kumbhar (supra). The purport of section 4 has been considered in this decision. The principle stated therein would apply with all force to the case on hand.

06. Insofar as the argument canvassed on behalf of the Petitioners that the original respondent cannot be treated as tenant as he is member of the owner’s family, as well as the argument that the thumb impression occurring on the applications filed on behalf of the original

owner being fraudulent, both these arguments cannot be entertained as are being raised for the first time before this Court. The original respondent may have been disentitled only if it was shown that he was member of Shamu Vithu Chavan's family. That is not the case of the present Petitioners. If it is so, this argument need not detain us to resolve the controversy between the parties.

07. For the view that I have taken, it is not necessary to examine the argument that the Petitioners are precluded to question the claim of tenancy of the original respondent, as the decision in the earlier proceedings between the original respondent and the original owner, predecessor of the Petitioners, has attained finality.

07. For the aforesaid reasons, this petition should fail and, instead, the opinion recorded by the appellate authority as confirmed by the revisional authority will have to be upheld. Accordingly, this petition is dismissed with no order as to costs. Rule discharged.

(A.M.KHANWILKAR,J.)